Supreme Court, U.S.
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No. 09-

IN THE

Supreme Court of the United States

UNITED STATES OF AMERICA EX REL. L. BROWN,

Petitioner,

v.

WALT DISNEY WORLD CO. AND
REEDY CREEK IMPROVEMENT DISTRICT,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the Circuit Court violates Due Process and the False Claims Act, and conflicts with Supreme Court's *Rockwell* ruling, other circuits, and legislative intent, in triggering the jurisprudence bar based on "information," not "allegations," including:

(a) Substituting the phrase, "the information upon which the allegations are based" in lieu of "allegations or transactions" in 31 U.S.C. § 3730(e)(4)(A), and

(b) Basing the 2nd, of a three-part inquiry in the 11th Circuit, on "disclosed information" in lieu of "disclosed allegations."

2. Whether the Circuit Court's decision violates the current § 3730(e)(4)(A), as amended by the Patient Protection and Affordable Care Act, signed 3/23/2010, which authorizes this pending appeal as to false claims continuing after the effective date of the amendment.

PARTIES TO PROCEEDING

1. Palm Hospitality Company and the parties named in the caption of this case, constitute the names of all the parties, Rule 14.1(b).

2. Respondent Walt Disney World Co.'s indirect corporate parent is The Walt Disney Company (N.Y. Stock Exch.: DIS), which is the publicly held company that effectively owns, through its subsidiary, Disney Enterprises, Inc., the stock of Walt Disney World Co. and Palm Hospitality Company stock. Rule 29.6.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Brown respectfully petitions for a writ of certiorari to review the opinion and judgment of the U.S. Court of Appeals for the Eleventh Circuit.

OPINIONS BELOW

The unpublished opinion and judgment of the panel of the U.S. Court of Appeals for the Eleventh Circuit, dated January 14, 2010, is reproduced in Appendix A at 1a-5a.

Four unpublished opinions and orders of the U.S. District Court for the Middle District of Florida, Orlando Division, are reproduced as follows:

Appendix:	B at 6a-8a	October 9, 2008
	C at 9a-10a	August 20, 2008
	D at 11a-12a	July 31, 2008
	E at 13a-26a	June 24, 2008

JURISDICTION

The judgment of the U.S. Court of Appeals sought to be reviewed was entered on January 14, 2010. The petition is timely under Supreme Court Rule 13.1 because it is being filed within 90 days after entry of the judgment. This Court has jurisdiction to review the judgment of the U.S. Court of Appeals for the Eleventh Circuit pursuant to 28 U.S.C. §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Patient Protection and Affordable Care Act

(Signed March 23, 2010)

Section 3730(e) of title 31, United States Code

(4)(A) The court shall dismiss an action or claim under this section, unless opposed by the Government, if substantially the same allegations or transactions as alleged in the action or claim were publicly disclosed—

(i) in a Federal criminal, civil, or administrative hearing in which the Government or its agent is a party;

(ii) in a congressional, Government Accountability Office, or other Federal report, hearing, audit, or investigation; or

(iii) from the news media, unless the action is brought by the Attorney General or the person bringing the action is an original source of the information.

(B) For purposes of this paragraph, 'original source' means an individual who either (i) prior to a public disclosure under subsection (e)(4)(A), has voluntarily disclosed to the Government the information on which allegations or transactions in a claim are based, or (2) who has knowledge that is independent of and materially adds to the publicly disclosed allegations or transactions, and who has voluntarily provided the information to the Government before filing an action under this section.

THE FEDERAL FALSE CLAIMS ACT
31 U.S.C. §§ 3729-3733
(In effect from 1986 to March 23, 2010)

§ 3730. Civil actions for false claims

(e) CERTAIN ACTIONS BARRED.—

(4)(A) No court shall have jurisdiction over an action under this section based upon the public disclosure of allegations or transactions in a criminal, civil, or administrative hearing, in a congressional, administrative, or Government [General] Accounting Office report, hearing, audit, or investigation, or from the news media, unless the action is brought by the Attorney General or the person bringing the action is an original source of the information.

(B) For purposes of this paragraph, "original source" means an individual who has direct and independent knowledge of the information on which the allegations are based and has voluntarily provided the information to the Government before filing an action under this section which is based on the information.

STATEMENT OF THE CASE

I. Facts Giving Rise To This Case

Reedy Creek Improvement District ("District") is a governmental entity. The Walt Disney World Co. ("WDW"), a Florida corporation, owns and operates theme parks and resorts within the boundaries of the District. The District encompasses approximately 25,000 acres, or 38.6 square miles, twice the size of Manhattan, within Orange and Osceola Counties. There are two municipalities within the District, the City of Lake Buena Vista and the City of Bay Lake.

The District operates a post office in the City of Lake Buena Vista under a contract with the U.S. Postal Service. The contract includes an Equal Opportunity Clause and a warranty of *de facto* non-segregation of employee housing, binding on the contractor, District, and subcontractor, WDW. The District's solicitation of the Postal contract, by its general manager, states (Dkt 39 Ex 6, Form 7309):

> I will use in order to satisfactorily operate the unit . . . due to a management agreement between Reedy Creek Improvement District and Walt Disney World Co. . . . persons employed at the World Disney World . . .

As an inducement to obtain the Postal contract, the District made representations and certifications, which include (Dkt 39 Ex 6, p. 7):

> By the submission of this offer, the offeror [District] certifies that he does not maintain

> or provide for his employees any segregated facilities at any of his establishments, and that he does not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. He certifies further that he will not maintain or provide for his employees any segregated facilities at any of his establishments, and that he will not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. The offeror or subcontractor agrees that a breach of this certification is a violation of the Equal Opportunity Clause of this contract. As used in this certification, the term "segregated facilities" means any waiting room, work areas, rest rooms and washrooms, restaurants and other eating areas, time clocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin, because of habit, local custom, or otherwise.

Palm Hospitality Company, an affiliate of WDW, has a contract and 100 year lease with the Army for an Armed Forces Recreation Center in the City of Bay Lake. The lease includes Equal Opportunity and Affirmative Action Clauses binding on the contractor and subcontractors, WDW and the District.

In accordance with its Enabling Act, the District's responsibilities include, among others, emergency medical services, fire protection, surface water control and drainage, utilities, maintenance of roads and bridges, land use regulation and planning, enforcement and inspections of building and other construction codes within the District, interfacing with local, regional, state, and federal agencies, the levying of fees and ad valorem taxes, developing facilities for airports and the generation of nuclear fission.

The District is governed by a five-member Board of Supervisors. The Enabling Act mandates that the Board shall be land owners of freehold estates within the District.

Respondents' prior law firm, Helliwell, Melrose, and DeWolf, by memo dated May 23, 1966, advised the Respondents that their private government could not exercise planning and zoning powers unless popularly elected, and cautioned against property qualification for voting, because acts depriving residents of their right to vote are unconstitutional. Mr.Thomas B. DeWolf, whose last name is the same as the previously named partner of the law firm, is now President of the District's Board of Supervisors.

This law firm memo was made available to Richard E. Foglesong, in connection with his book, *Married To The Mouse* (Yale U. Press 2001) (R.E. Vol. 2 at 483) but is not included in book reviews, or other publications. The book contains no allegations or transactions. Mr. Foglesong concludes (Dkt 39 Ex 14), "By this legal magic, the company was able to comply with the law and still enjoy regulatory immunity."

The initial lead attorney for WDW, David W. Ogden, Esq., served as Assistant Attorney General for the Civil Division of the Department of Justice (1999-2001) and as its Deputy Attorney General, second ranking official and chief operating officer, from 2009 to 2010; and is currently a partner and co-chair of the Government and Regulatory Litigation Group of WilmerHale, the lead law firm for WDW.

The U.S. Attorney declined to intervene in this case.

The Postal Service contract was amended, granting the District's requests for increased prices. A copy of the amendment dated February 6, 2002, Dkt 44, Exh. P1, was submitted to the District Court by Relator Brown on May 14, 2008. The amendment, which was omitted from Respondents' copy of the contract, stipulates:

> Except as provided herein, all terms and conditions of the document referenced in Block 1 [Postal contract]. as heretofore changed [increased price], remain unchanged and in full force and effect,

The Postal "Contract Provisions" include, "Representations & Certifications," which are the warranties at issue in this action. The District Court's rejection of the warranty as to *de facto* non-segregation of employee housing did not refer to the amendment, executed February 6, 2002. The District Court concluded it would disregard the alleged breach of warranty because the de-annexation in 1990 could not establish the falsity of the initial warranty in 1988 (App. E 5).

The District Court did not refer to any breach of the warranty in the 2002 amendment. The warranty made in the 2002 amendment was subsequent to the segregation that resulted previously by the de-annexations in 1990, which eliminated all African-Americans and Hispanics previously residing permanently in the City of Lake Buena Vista.

The census reports for 1990 disclose there were approximately 1,776 people permanently living in Lake Buena Vista within the District, of which 8% were minorities. As a result of Respondents' de-annexation of their Vista Way apartment complex in 1990, there remain 39 permanent residents in the District, who are present or former employees of Respondents, and their families. Of the 39, one is of a minority in the City of Bay Lake, and none is of a minority in the City of Lake Buena Vista, for a total of one minority permanent resident in the District.

The District projects its seasonal population in 2008 on an average day to approximate 124,844 persons, in hotels, timeshare units and RVs, residing more than one day but less than six months, none of whom is permitted to vote in elections in the two cities, nor in the District. All permanent residents now live in two WDW trailer camps, and are estimated at 47 in the years 1998, 2003, and 2008, and the number remains the same into the future (RE Vol. 1 at 10, 11.)

Qualified "permanent" individual residents in the two cities are permitted to vote in the city elections but not in the District because none owns land in the

District. No land is, nor has been, for the past 40 years, available to purchase by individuals for permanent residence within the District.

II. The District Court Proceedings

This is a qui tam action pursuant to the False Claims Act ("FCA"), 31 U.S.C. § 3729 *et seq.* The District Court has jurisdiction pursuant to 31 U.S.C. § 3739(b) and 28 U.S.C. § 1331.

The First Amended Complaint consists of two causes of action, both related to the contract, as amended, with the U.S. Postal Service. The first cause of action alleges false warranties as to (i) *de facto* racial non-segregation of employee housing, and (ii) denial that the District has a parent company as specifically defined in the contract.

The second cause of action alleges the signatures to the agreement, as amended, are not duly authorized because the Supervisors are elected unlawfully on the basis of one acre/one vote, with provisions for fractions.

The District Court's Order, dated June 24, 2008 (App. E), granted Defendants' Motion to Dismiss With Prejudice. The Order dated July 31, 2008 (App. D) converted the prior order to dismissal without prejudice. The Order dated August 20, 2008 (App. C) denied Motion to Alter. The Order dated October 9, 2008 (App. B) denied Leave to Amend to add similar false claims based on a newly obtained copy of the Army lease.

III. The Circuit Court Proceedings

The Circuit Court has jurisdiction under 28 U.S.C. § 1291. By unpublished decision filed January 14, 2010 (App. A), the Circuit Court decreed its *de novo* opinion as the judgment of the Circuit Court, finding no error in the dismissal by the District Court. Petitioner Brown's Motion for Publication of Opinion was not responded to by Respondents, and was denied.

REASONS FOR GRANTING THE PETITION

Respondents segregate employee housing, and thereby prevent minority employees from voting. Their goal is accomplished by an ongoing pattern of de-annexations creating *de facto* racial segregation in violation of the Equal Opportunity clauses in both contracts. As a consequence, all payments in connection with the Postal and Army contracts – past, present, and ongoing, are false claims in violation of the FCA.

"(T)he general rule is that a Government contract tainted by fraud or wrongdoing is void ab initio," *Godley v. United States*, 5 F.3d 1473, 1476 (Fed. Cir. 1993). *Long Island Savings Bank et al. v. United States*, 503 F.3d 1234, 1246 (Fed. Cir. 2007), cert. den., 129 S. Ct. 38 (2008), held:

> A government contract . . . tainted from its inception by fraud is void ab initio, like the government contracts held void because similarly tainted by a prohibited conflict of interest in *United States v. Mississippi Valley Generating Co.*, 364 U.S. 520, [566] 81 S. Ct. 294, [317] (1961) . . .

I. Due Process Was Denied.

Although due process tolerates variances in procedure appropriate to the nature of the case, core goals and requirements are recognized by this Court in *Carey v. Piphus*, 435 U.S. 247, 259 (1978):

> Procedural due process rules are means to protect persons not from deprivation, but from the mistaken or unjustified deprivation of life, liberty, or property. Thus, . . . 'procedural due process rules are shaped by the risk of error inherent in the truthfinding process, *Mathews v. Eldridge*, 424 U.S. 319, 344 (1976).'

The core due process requirements apply to the Circuit Court's decision which entails the following mistaken and unjustified deprivations of Petitioner Brown's property rights in this action, by substituting a phrase including the term "information," in lieu of the statutory requirement of "allegations or transactions" (emphasis added.):

> (App A at 3a): Courts lack subject matter jurisdiction over FCA *qui tam* suits if the **information** upon which the allegations or transactions are based was publicly disclosed before the filing of the complaint. 31 U.S.C. § 3730(e)(4)(A) . . .

(App. A at 5a): Because Plaintiff's *qui tam* FCA action was based on publicly disclosed **information**, the district court concluded correctly that it lacked subject-matter jurisdiction over the suit.

The 2nd part of the 11th Circuit three-part inquiry (App. A at 3a) is in error. § 3730(e)(4)(A) requires "disclosed allegations," not "disclosed information.

The Circuit Court adopted a fabricated version of § 3730(e)(4)(A) in the Brief for Appellees (Respondents herein), dated 4/30/2009, at p. 24, which represented:

> Courts lack subject matter jurisdiction over *qui tam* suits if the information upon which the allegations are based were publicly disclosed prior to the filing of the Complaint. . . .

Respondents' pattern of misrepresentations have induced a series of denials by the Circuit Court which further deprive Petitioner Brown of her right to due process, as follows:

1. Denial of the opportunity for requested Oral Argument, caused by Respondents' representations to the Circuit Court of "an uncontested factual record" (Appellees Br. 4/30/09 at p. ii), despite the following deliberate and material falsehood, at p. 9, thereof never withdrawn:

> They [Board of Supervisors] are compensated (minimally) by the District, and by no other entity, for their service.

WDW and its affiliates grant five acres in the District to each Supervisor, by special warranty (SW) deed. in fee simple forever, at little or no cost (R.E. Vol. 1, Exhs. 56-59.) Sales at market prices of WDW land in the District, sold subject to de-annexation, exceed $100,000 per acre, in excess of $500,000 for each 5 acre grant to a Supervisor, as evidenced by the following sales of land in the District:

Respondents' Sales of Land in District

Date	Purchaser	Location	Use	Acres	Price $	Acre $
12/05	Centex	Reams Rd	N/A	47	4,800,000	102,000
2/06	Sherberth	Sherberth	Condos	53	15,400,000	290.000
5/06	Centex	Seidel	Homes	50	8,300,000	166,000

The Enabling Act limits compensation of Board members to $25 for each day, not exceeding $100 in any one month. All candidates receiving land grants from WDW and affiliates are non-residents of the District.

The Orange County Property Appraiser, in which the grants are located, defines the deed types as follows (R.E Vol. 1 at 8):

> Special Warranty (SW) – This type of deed contains a special warranty that the grantor (seller) has done nothing to cloud or encumber the title.

Despite Respondents' undertakings not to cloud or encumber the title, options are retained, at their sole discretion, to reacquire all such five acre grants and thereby disqualify the Supervisors from holding office. No prior Supervisor has ever retained ownership in any land in the District.

2. The jurisdictional bar was triggered by classifying the facts involved as being in a "factual attack" rather than a "facial attack." The District Court's June 24, 2008 decision (App. E at 5a) ruled:

> Further, because the Defendants' jurisdictional challenge is a factual attack supported by evidentiary materials, Relator has the burden of proving that subject matter jurisdiction exists [Even if the Defendants have the burden of establishing the absence of jurisdiction, the outcome would be the same, since the Defendants have met that burden,] *Paterson v. Weinberger*, 644 F.2d 521, 523 (5th Cir. 1981).

For a "factual attack," the *Paterson* case requires, "affidavits, testimony, or other evidentiary materials;" none exist in this action.

This case consists of the First Amended Complaint and exhibits from counsel. The hearing on June 25, 2008 was solely with counsel and was non-evidentiary. Relator's request for discovery was not allowed. Respondents' attorney submitted hundreds of pages, from a multitude of sources, stating that each was a true copy, but the attorney has no personal knowledge as to

any of the contents. In fact, Respondents' attorney reserves the right to refute the contents. The documents contain no allegations or transactions and Respondents do not acknowledge that any allegations or transactions exist.

Stalley v. Orlando Regional Healthcare System, Inc., 524 F.3d 1229, 1233 (11th Cir. 2008) holds:

> Our review of the record establishes that the district court considered only the complaint and the attached exhibits and treated . . . motion as a facial attack on complaint . . . and 'the court must consider the allegations in plaintiff's complaint as true.'

The record herein is comparable to that in *Stalley* (App. D at 12a), consisting of the complaint and exhibits from counsel. There were no evidentiary hearings, witness affidavits, live testimony, or any discovery. The result constitutes a "facial attack" and the allegations in the First Amended Complaint should be considered as true, barring dismissal.

3. No requested discovery was allowed as to the disputed facts related to de-annexations, which affect jurisdiction, thereby in conflict with the mandate in *Eaton v. Dorchester Development, Inc.* 692 F.2d 727,731 (11th Cir. 1982), which held:

> We hold that the district court's dismissal for lack of jurisdiction was premature. Plaintiff **must** be given an opportunity to develop facts sufficient to support a determination on the

> issue of jurisdiction...'the rules entitle a plaintiff to elicit material through discovery before a claim may be dismissed for lack of jurisdiction' (emphasis added.)

4. Stamp "DO NOT PUBLISH" cancels right to appeal en banc to correct jurisdiction bar based on precedent of "disclosed information" (11th Cir. R. 35-4.)

II. The Circuit Court's Decision Conflicts With The Supreme Court's Acknowledgment That "Allegations" Must Be Disclosed.

The Supreme Court in *Rockwell Int'l Corp. et al. v. U.S. et al.* 549 U.S. 457, 476, 127 S. Ct. 1397, 1410 (2007), held (emphasis added):

> Subparagraph (A) [of 31 U.S.C. § 3730(e)(4)] . . . bars actions based on the 'public **disclosure** of **allegations** or transactions . . .'
>
> Each *qui tam* claim **must** be examined to determine whether the **allegations** have been publicly **disclosed** . . .

This Court states in *Rockwell*, "information" in (A) and (B) of §3730(e)(4) means the same thing; both use the term in reference to "original source." Subsection (A) states, "No court shall have jurisdiction . . . upon the public disclosure of **allegations or transactions** . . . unless . . . the person bringing the action is an original source of the information," and (B) states, an "original source" means an individual who has direct and independent knowledge of "the information on which the allegations are based . . ." Thus, the jurisdictional bar is triggered by prior "allegations or transactions," not "information."

III. The Circuit Court's Decision Violates 31 U.S.C. § 3730(e)(4)(A).

The Circuit Court affirmed the District Court's dismissal of this action for lack of subject matter jurisdiction, "Because Plaintiff's *qui tam* FCA action was based on publicly disclosed information . . ." (App. A at 5a). The Circuit Court's opinion is in conflict with the statute which authorizes the jurisdiction bar based solely on publicly disclosed "allegations or transactions," not "information."

IV. The District Knowingly Conducts Elections Unlawfully

Brief For Appellees (Respondents herein), 4/30/09 at p. 9, represented to the Circuit Court, "**Under Florida law,** the District is governed by . . . Supervisors elected by the District's land owners" (emphasis added.)

To the contrary, the District's elections are not conducted under Florida law. In 1977, Florida completely revised its entire Election Code, chs. 99-106, F.S., superseding the qualification of property for voting in the Enabling Act.

The Election Code now provides for a permanent single registration system. A person may become a registered voter, with few exceptions, if: at least 18, a U.S, citizen, a legal resident of Florida and the county, and registers.

The Legislature's complete revision of a subject is an implied repeal of earlier acts dealing with the same subject unless a contrary intent is clearly shown. Where an act is intended to cover an entire subject of legislation it operates to repeal all former acts dealing with the same subject. *Zedalis v. Foster*, 343 So.2d 849 (2d D.C.A. Fla. 1976).

The Florida Division of Elections, with primary responsibility for elections, in DE 78-38 – 9/1/78 (Dkt 40-Ex 49), ruled:

> Recent opinions of this office and the Attorney General found the 1977 election law revision to have replaced special acts with regard to the procedures whereby persons qualify as candidates for district offices. DE 78-11 (January 30, 1978). As stated by the Attorney General:
>
> '. . . ch. 77-175 (Laws of Florida), represents a general revision of the entire Election Code (chs. 99-106, F.S.); and it seems to have clearly intended to prescribe the only rule governing the subject matter provided for, such as the qualification of candidates . . . and conduct of . . . elections . . .' Op. Att'y Gen. Fla, 078-38 (March 3, 1978). . . .

One year after the RCID Enabling Act, the United States Supreme Court in *Avery v. Midland County*, 390 U.S. 474, 480, 485, 88 S. Ct 1114, 1118, 1121 (1968) (Dkt

41-Ex 52), extended the one person/one vote requirement to local governments:

> [I]t is now beyond question that a State's political subdivisions must comply with the Fourteenth Amendment. The actions of local government *are* the actions of the State . . . it must insure that those qualified to vote have the right to an equally effective voice in the election process . . .

A land-ownership requirement for appointment to the board of freeholders violates the Equal Protection Clause, *Turner v. Fouche*, 396 U.S. 346, 361-64, 90 S. Ct. 532, 541-42 (1970) (Dkt 41-Ex 53). *Woodward v. Deerfield Beach*, 538 F.2d 1081, 1083 (5th Cir.1976) (Dkt. 41-Ex 54), binding precedent in the Eleventh Circuit, held, "Offices of general governmental responsibility can never be limited to freeholders."

The Supremacy Clause of the United States Constitution, U.S. Const. art. VI, cl.2, provides that federal law, "[s]hall be the Supreme Law of the Land . . . anything in the Constitution or Laws of any State to the contrary notwithstanding."

As a result, "any state law, however clearly within a State's acknowledged power, which interferes with or is contrary to federal law, must yield." *Gade v. Nat'l Solid Wastes Mgmt. Ass'n*, 505 U.S. 88, 108, 112 S. Ct. 2374, 2388 (1992).

The District has general governmental responsibility and therefore the requirement of owning

land to hold office and vote is in violation of Florida law and the U.S. Constitution, rendering such elections void.

Respondents acted knowingly, having been advised by their law firm in writing that acts depriving residents of their right to vote are unconstitutional. As a result of being elected unlawfully, the District Supervisors are not duly authorized to execute contracts on behalf of the District.

V. The 3/23/2010 Amendment To 31 U.S.C. §3730(e)(4)(A) Bars Dismissal Of Pending Actions For Continuing Qualified False Claims.

False claims continue under the United States Postal Service contract and under the 100 year lease to the Army, which is the subject of the denied request for leave to amend.

The 3/23/2010 amendment removed any justification for triggering the jurisprudence bar prospectively in this action.

VI. Respondents' Interpretation Would Bar All *Qui Tam* Actions.

The Brief For Appellees (Respondents herein) in the Circuit Court, 4/30/09 p.34, frivolously magnifies the scope of public disclosures which trigger the jurisdictional bar (emphasis added):

> [T]he **information** underlying Brown's allegation that the Board of Supervisors was not duly authorized to approve the contract

> with the Postal Service is based entirely upon **public laws**, court decisions, **legal dictionaries**, websites, Attorney General opinions, Division of Election opinions, other state administrative reports, public land records, a public settlement agreement between the District and Orange County, **books by critics**, and countless news articles. **All** of these sources **constitute public disclosures** under the False Claims Act.

Respondents' interpretation in effect bars all *qui tam* actions because they are necessarily based on "public laws" and "legal dictionaries." Such interpretation is contrary to binding precedent in *U.S. ex rel. Williams v. NEC Corp.*, 931 F.2d 1493, 1499 (11th Cir. 1991):

> [T]he methods of public disclosure set forth in section 3730(e)(4)(A) are exclusive of the types of public disclosure that would defeat jurisdiction under that section. The list of methods of "public disclosure" is specific and is not qualified by words that would indicate that they are only examples of the types of "public disclosure" to which the jurisdictional bar would apply. Congress could easily have used "such as" or "for example" to indicate that its list was not exhaustive. But it did not; however, we will not give the statute a broader basis than that which appears in its plain language . . .

Under section 3730(e)(4)(A), a qui tam action is barred only if based upon information disclosed in 'a congressional, administrative, or Government Accounting Office report, hearing, audit, or investigation . . .' 31 U.S.C. Sec. 3730(e)(4)(A). A plain reading of this language reveals that 'congressional, administrative or Government Accounting Office' modifies 'report, hearing, audit, or investigation.' Any other reading of that phrase would be illogical. Because Williams's report on bidding practices was not issued by Congress, an administrative agency, or out of the Government Accounting Office, therefore, it is not a 'public disclosure' within the meaning of section 3730(e)(4)(A).

Because we find no 'public disclosure' under section 3730(e)(4)(A), Williams's qui tam is not jurisdictionally barred under that section. Therefore, we need not reach the question of whether Williams was an 'original source' of the information that formed the basis of his suit. The 'original source' inquiry only becomes necessary once a court makes a factual determination that the particular qui tam suit before it was based upon information that was publicly disclosed.

VII. This Appeal Is Particularly Suitable To Resolve Prevailing Conflict Among And Within the Circuit Courts As To The Need For Prior "Allegations" or "Information" To Trigger The Jurisdiction Bar.

The issues in this case, dismissed without prejudice, will continue to arise until they are settled by authoritative opinion predicated on the actual wording of the controlling statute.

The inquiry into this subject was highlighted in *U.S. ex rel. Springfield Railway Terminal Co. v. Quinn*, 14 F.3d 645, 654-6 (D.C. Cir. 1994) where the court distinguished "information" from allegations or transactions. For purposes of such bar, the term "transactions" must reveal the fraudulent nature of the transactions involved. The court held:

> As the Ninth Circuit recently recognized . . . the Act bars suits based on publicly disclosed 'allegations or transactions,' not 'information.' . . . We too find a distinction between 'allegations or transactions' and ordinary 'information' as a matter of common usage and sound interpretation of the FCA. The pay vouchers and telephone records . . . were not in and of themselves sufficient to constitute 'allegations or transactions' of fraudulent conduct within the meaning of the FCA jurisdictional bar.

Conflict exists because the courts are frequently using the term "information" loosely in triggering the jurisdiction bar despite relying on "allegations."

The District Court in its Order 10/09/2008 (App. B at 2a) refers to the ruling, "The FCA is most naturally read to preclude suits based in any part on publically disclosed information," quoted in *U.S. ex rel. Battle v. Bd. of Regents for Ga.*, 468 F.3d 755, 762 (11th Cir. 2006), which in turn was quoted from the leading *qui tam* decision in the 11th Circuit, *U.S. ex rel. Cooper v. Blue Cross and Blue Shield of Florida, Inc.*, 19 F.3d 562, 566-7 (11th Cir. 1994).

In both cases, however, the term "information" for purposes of precluding suit referred to allegations or transactions, as required by 31 U.S.C. § 3730(e)(4)(A), not generalized information. In *Battle*, plaintiff relied on the results of state audits. In *Cooper*, a GAO report that criticized a payment monitoring plan with a potential conflict of interest, "did not constitute a 'public disclosure of allegations or transactions' that BCBSF knowingly violated" the law (Dkt. 44 at 11.)

Cooper further holds at pp. 566-7:

> The publication of general, non-specific information does not necessarily lead to the discovery of specific, individual fraud which is the target of the *qui tam* action.
>
> [*Q*]*ui tam* suit not barred when neither defendant's name nor its alleged fraudulent conduct was disclosed in government reports.
>
> Because we consider it to be crucial whether BCBSF was mentioned by name or otherwise specifically identified in public disclosures,

> we consider separately those sources in which it was identified and those it which it was not . . .

In *U.S, ex rel. McElmurray v. Consolidated Government of Augusta-Richmond County*, 501 F.3d 1244 fn 18 (11th Cir. 2007), use of the term "information" was based on "allegations" in prior litigation and enforcement proceedings.

Cooper at 19 F.3d 562, 565 n.4 (11th Cir. 1994), *Battle* at 468 F.3d 755, 762 (11th Cir. 2006), and *McElmurray* at 501 F.3d 1244, 1252-3 (11th Cir. 2007), have condensed §3730(e)(4) into a three part inquiry to determine if subject matter jurisdiction over a *qui tam* claim exists, as follows:

> (1) have the **allegations** made by the plaintiff been publicly disclosed; (2) if so, **is the disclosed information the basis of the plaintiff's suit;** (3) if yes, is the plaintiff an 'original source' of that information. (Emphasis added.)

In the 2nd of the three-part 11th Circuit inquiry (App. A at 3a), the phrase, "are the disclosed allegations" rather than "is the disclosed Information," comports with § 3730 (e)(4)(A).

In *U.S. ex rel. Dick v. Long Island Lighting Co.*, 912 F.2d 13, 17 (2d Cir. 1990), the court concludes: "[W]e believe that if the **information** on which the qui tam suit is based is in the public domain, . . . then the suit is barred" (emphasis added.) This conclusion is

predicated, however, by ruling in an earlier portion of the decision:

> Section 3730(e)(4) does not operate to bar a qui tam action unless the action is based upon publicly disclosed 'allegations or transactions.' In this case, there is no dispute that appellant's suit is based upon publicly disclosed 'allegations or transactions.'

U.S. ex rel. Mikes v. Straus et al., 931 F. Supp.248, 254 (S.D.N.Y. 1996). held that a qui tam suit alleging false claims was not jurisdictionally barred under § 3730(e)(4)(A) because there was no public disclosure of "allegations or transactions." The critical issue before the court in *Mikes* was whether the "relator's *allegations* were publicly disclosed elsewhere and prior to the qui tam action" – not just information concerning the allegations.

Dingle v. Bioport Corporation, 388 F.3d 209, 212 (6th Cir. 2004) holds:

> Either a public disclosure which includes an *allegation* of fraud, or a public disclosure that describes a transaction that includes both the state of facts as they are plus the misrepresented state of facts must be present to eliminate jurisdiction in a case. (Emphasis added.)

In *Wang v. FMC Corporation*, 975 F.2d 1412, 1418 (9th Cir. 1992) the court ruled::

> Courts sometimes speak loosely of barring a qui tam suit because it is based on 'publicly disclosed information.' . . . But the Act bars suits based on publicly disclosed 'allegations or transactions,' not information. 31 U.S.C. §3730(e)(4)(A). The point is not mere semantics: the Act distinguishes between 'allegations' and the 'information on which the allegations are based.' 31 U.S.C. § 3730(e)(4)(B). The Act appears to be invoking the common logical distinction between an assertion and its proof. . . . No doubt when the courts speak of 'publicly disclosed information,' they mean both the allegation of fraud and all information proving the allegation that has made its way to the public . . . Both plain meaning and a consideration of the aims of the statute direct this conclusion.

The legislative intent is expressed by Representative Berman, on behalf of himself and Senator Grassley, False Claims Act, 106th Cong. 1st Sess. in 145 Cong Rec E 1546, 7 (July 14, 1999) as follows:

> [W]e want forcefully to disagree with cases holding that qui tam suits are barred if the relator obtains some, or even all, of the information necessary to prove fraud from publicly available documents, such as those obtained through a Freedom of Information

> Act (FOIA)...We believe that a [relator] who uses their education, training, experience, or talent to uncover a fraudulent scheme from publicly available documents, should be allowed to file a qui tam action . . . if, absent the relator's ability to understand a fraudulent scheme, the fraud would go undetected, then we should reward relators who with their talent and energy come forward with allegations and file a qui tam suit. This is especially true where a relator must piece together facts exposing a fraud from separate documents.

The court in *Cooper*, fn 7, held, "[S]tatements by committee chairmen in charge of a bill or the sponsor or author of legislation are entitled to some weight." In construing a statute, "[o]ur ultimate goal is to give effect to congressional intent," *Morante-Navarro v. T&Y Pine Straw, Inc.*, 350 F.3d 1163, 1166 (11th Cir. 2003).

VIII. There Are No Prior Public Disclosures Of Any "Allegations or Transactions" In This Case – NONE:

(a) Petitioner has found none.

(b) Respondents have never cited any.

(c) The Circuit Court never found any allegations or transactions and concluded in the final paragraph of its decision. (App. A at 5a):

> Because Plaintiff's *qui tam* FCA action was based on publicly disclosed information, the

> district court concluded correctly that it lacked subject-matter jurisdiction over the suit. AFFIRMED.

(d) The District certifies in both its Official Statements dated May 11,2005 for Series 2005 A & B bonds, p.32, and June 18, 2003 for Series 2003-1 bonds, p.73., [Dkt 44 Ex P-5], modified as to the Series, as follows:

> LITIGATION:
>
> As of the date of this Official Statement, there is no pending litigation restraining or enjoining the issuance or delivery of the Series 2005 Bonds or the proceedings and authority under which they are to be issued, or which would adversely affect the District's ability to pay principal of and interest on the Series 2005 Bonds. Neither the creation, organization or existence of the District, nor the title of the present members of the Board of Supervisors of the District or other officers of the District to their respective offices is being contested.

The District's continuing certifications, in their bond indentures, signed subject to perjury, quoted above, confirm that Petitioner-Relator's allegations or transactions were not previously disclosed.

(e) The contracts with the United States Postal Service and the Army are subject to the Federal Acquisition Regulation (FAR) (73 Fed. Reg. 67064).

Effective December 12, 2008, the clause at FAR 52.203-13 was amended with the following requirement (App. F):

> (3)(i) The Contractor shall timely disclose, in writing, to the agency Office of the Inspector General (OIG), with a copy to the contracting officer, whenever, in connection with the award, performance or closeout of this contract or any subcontract thereunder, the contractor has credible evidence that a principal, employee, agent, or subcontractor of the Contractor has committed –
>
> (A) A violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 16 of the United States Code, or
>
> (B) A violation of the civil False Claims Act (31 U.S.C. §§ 3729-3733).

Respondents have not made any mandatory disclosure to the government of "credible evidence" of violations of the civil False Claims Act (App. F). The report required by Respondents is material to the considered decision by United States whether to currently intervene.

CONCLUSION

This Court's review is necessary to restore Democracy's "Crown Jewels" of voting rights and non-segregated housing to over 100,000 residents in Respondents' vast Florida resort complex (R.E. Vol. 1 at 11). Many will benefit from this Court's opinion. All may lose without it.

For the foregoing just reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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April 13, 2010

APPENDIX

APPENDIX A — JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT DECIDED JANUARY 14, 2010

[DO NOT PUBLISH]

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 08-16350
Non-Argument Calendar

D.C. Docket No. 06-01943-CV-ORL-22-KRS

UNITED STATES OF AMERICA,
ex rel, L. BROWN,

Plaintiffs-Appellants,

versus

WALT DISNEY WORLD CO., REEDY CREEK IMPROVEMENT DISTRICT,

Defendants-Appellees.

Appeal from the United States District Court
for the Middle District of Florida

(January 14, 2010)

Before EDMONDSON, MARCUS and ANDERSON, Circuit Judges.

PER CURIAM:

Appendix A

In this *qui tam* action brought pursuant to the False Claims Act, 31 U.S.C. § 3729 *et seq.*, Plaintiff-Relator L. Brown appeals the dismissal of her complaint against Defendants Walt Disney World Company ("Disney") and Reedy Creek Improvement District ("RCID").[1] The district court dismissed the complaint for lack of subject-matter jurisdiction, Fed.R.Civ.P. 12(b)(1). No reversible error has been shown; we affirm.

In 1988, RCID contracted with United States Postal Service to operate a post office in a municipality located within its boundaries. Plaintiff claimed that RCID obtained this contract through these false statements: (1) that it provided nonsegregated housing for its employees and (2) that RCID had no parent company. Plaintiff also alleged that RCID's Board of Supervisors was not duly elected and, thus, had no authority to enter into the contract. The district court granted Defendants' motion to dismiss, concluding that Plaintiff failed to meet the jurisdictional requirement of the FCA, 31 U.S.C. § 3730(e)(4)(A), because the allegations and transactions on which Plaintiff based her complaint had been publicly disclosed and Plaintiff did not qualify as an original source of the information.

On appeal, Plaintiff argues that the jurisdictional bar did not apply because she drafted her complaint based on general information available to the public, not

---

1. RCID is a governmental entity that was created by the Florida legislature in 1967; and the Disney resort is located within the boundaries of RCID.

on public information about the wrongs alleged in her complaint. We review a district court's dismissal of a complaint for lack of subject-matter jurisdiction *de novo*. *Makro Capital of Am., Inc. v. UBS AG*, 543 F.3d 1254, 1258 (11th Cir. 2008). The party bringing the claim bears the burden of establishing federal subject-matter jurisdiction. *Sweet Pea Marine, Ltd. v. APJ Marine, Inc.*, 411 F.3d 1242, 1247 (11th Cir. 2005).

Courts lack subject-matter jurisdiction over FCA *qui tam* suits if the information upon which the allegations or transactions are based was publicly disclosed before the filing of the complaint. 31 U.S.C. § 3730(e)(4)(A); *McElmurray v. Consolidated Gov't of Augusta-Richmond County*, 501 F.3d 1244, 1250-51 (11th Cir. 2007). We use this three-part inquiry to determine if subject-matter jurisdiction exists over a *qui tam* FCA claim: "(1) have the allegations made by the plaintiff been publicly disclosed; (2) if so, is the disclosed information the basis of the plaintiff's suit; (3) if yes, is the plaintiff an 'original source' of that information." *Battle v. Board of Regents*, 468 F.3d 755, 762 (11th Cir. 2006) (citation omitted). The FCA precludes suits based in *any part* on publicly disclosed information. *See id.*

Here, we agree with the district court that the FCA's public-disclosure bar precluded Plaintiff's suit. About the first part of the test, Plaintiff's allegations were based on publicly disclosed information. The basis for Plaintiff's claim that RCID maintained segregated housing for its employees was the de-annexation of certain property in RCID on which residential housing

was constructed. But Defendants' practice of de-annexing residential housing parcels had been the subject of newspaper articles. *See* 31 U.S.C. § 3730(e)(4)(A) (listing sources of publicly disclosed information, including the news media). Plaintiff's only support for her allegation that RCID's parent certification was false and that Disney, in fact, controlled RCID, was a federal court opinion. *See id.* (documents from a civil hearing are publicly disclosed information); *McElmurray*, 501 F.3d at 1253 (concluding that district court orders constituted public disclosures under the FCA).[2] And Plaintiff's allegation that the board of supervisors was not duly authorized also was based on publicly disclosed information, including state administrative reports and news articles. Plaintiff argues that single, isolated exhibits included with her complaint do not constitute publicly disclosed information within the meaning of section 3730(e)(4)(A); but the FCA precludes suits based in *any part* on publicly disclosed information. *See Battle*, 468 F.3d 755, 762.

Plaintiff relied on publicly disclosed information to support all of her allegations; thus, it follows that the disclosed information formed the basis of Plaintiff's complaint. Plaintiff's argument that she based her claims on general information available to the public is unavailing: her allegations of wrongdoings about the alleged false statements — including the de-annexation

2. The suggestion that Disney controlled RCID also appeared in many newspaper articles.

of property, the question of who controlled RCID, and the legitimacy of RCID's Board — mirrored those in the public information upon which she relied. And Plaintiff provided nothing, other than her own conclusory allegation, to show that she was an original source of the information on which her complaint was based. *See* 31 U.S.C. § 3730(e)(4)(B) (explaining that an original source is a person who has "direct and independent knowledge" of the information on which the allegations are based).

Because Plaintiff's *qui tam* FCA action was based on publicly disclosed information, the district court concluded correctly that it lacked subject-matter jurisdiction over the suit.[3]

AFFIRMED.

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3. We have reviewed Plaintiff's remaining appellate arguments and conclude that no reversible error has been shown.

APPENDIX B — ORDER OF THE UNITED STATES DISTRICT COURT, MIDDLE DISTRICT OF FLORIDA, ORLANDO DIVISION DATED OCTOBER 9, 2008

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

Case No. 6:06-cv-1943-Orl-22KRS

UNITED STATES OF AMERICA,
ex rel. L. BROWN,

Plaintiff-Relator,

-vs-

WALT DISNEY WORLD CO., and
REEDY CREEK IMPROVEMENT DISTRICT,

Defendants.

ORDER

This cause comes before the Court for consideration of a document entitled "Relator's Two Motions: (1) Vacate, Alter or Amend Final Order 8/20/08 Doc. 54, and (2) Leave to Amend Complaint [ ] Based on Newly Discovered Evidence and Memorandum of Law" (Doc. No. 55), filed on September 4, 2008, as well as the Defendants' response thereto (Doc. No. 56). This is Relator's third motion for relief from the Court's prior rulings that her claim is precluded by the False Claims Act's "public disclosure" bar. 31 U.S.C. § 3730(e)(4)(A).

Once again, Relator has not presented any basis for vacating, altering or amending the August 20th Order, or any of the orders that preceded it. This Court lacks jurisdiction to entertain Relator's most recent theory of liability; this new claim, like the prior claim, is precluded by the public disclosure bar.

From a plain reading of Relator's motion, it is evident that Relator bases her claim on a response she received from the Department of the Army pursuant to the Freedom of Information Act (FOIA). (Doc. No. 55 at 1-5 & Ex. P-13.) A response to a FOIA request "is an administrative report constituting a public disclosure under § 3730(e)(4)(A)." *United States ex rel. Reagan v. E. Tex. Med. Ctr. Reg'l Healthcare Sys.*, 384 F.3d 168, 176 (5th Cir. 2004). *But cf. United States ex rel. Haight v. Catholic Healthcare West*, 445 F.3d 1147, 1153 (9th Cir. 2006) (rejecting proposition that all documents obtained through FOIA are public disclosures under the FCA, and stating that "a response to a FOIA request is not necessarily a report or investigation, although it can be, if it is from one of the sources enumerated in the [FCA]"). Moreover, as was the case with her prior claim, the population figures upon which Relator's allegations of segregated housing are based have been publicly disclosed in census reports.

"The FCA is most naturally read to preclude suits based in *any part* on publicly disclosed information." *Battle v. Bd. of Regents for Ga.*, 468 F.3d 755, 762 (11th Cir. 2006) (citation and some internal quotation marks omitted). "Therefore, a plaintiff basing an FCA qui tam

claim *in any part* on such publicly disclosed information must demonstrate that the plaintiff is an original source of that information." *Id.* (emphasis added).

A significant part of the allegations and transactions upon which Relator's most recent theory of FCA liability are based have been publicly disclosed. Further, by no stretch of the imagination can Relator be considered an original source. Since this Court lacks subject matter jurisdiction if *any part* of an FCA claim is based on publicly-disclosed allegations and transactions, Relator has not demonstrated any basis for relief from the Court's prior orders. For the same reason, leave to amend would be futile.

Based on the foregoing, it is ORDERED that "Relator's Two Motions: (1) Vacate, Alter or Amend Final Order 8/20/08 Doc. 54, and (2) Leave to Amend Complaint [ ] Based on Newly Discovered Evidence and Memorandum of Law" (Doc. No. 55), filed on September 4, 2008, construed as two separate motions, are DENIED.

DONE and **ORDERED** in Chambers, in Orlando, Florida on October 9, 2008.

s/ Anne C. Conway
ANNE C. CONWAY
United States District Judge

APPENDIX C — ORDER OF THE UNITED STATES DISTRICT COURT, MIDDLE DISTRICT OF FLORIDA, ORLANDO DIVISION DATED AUGUST 20, 2008

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

Case No. 6:06-cv-1943-Orl-22KRS

UNITED STATES OF AMERICA,
ex rel. L. BROWN,

Plaintiff-Relator,

-vs-

WALT DISNEY WORLD CO., and
REEDY CREEK IMPROVEMENT DISTRICT,

Defendants.

ORDER

Upon the Court's review of this case, it is ORDERED that the Relator's Motion to Vacate, Alter or Amend Final Judgment Entered 7/31/08, etc. (Doc. No. 53), filed on August 14, 2008, is DENIED. The Relator has not presented any basis for vacating, altering or amending the July 31st Order.

Appendix C

DONE and **ORDERED** in Chambers, in Orlando, Florida on August 20, 2008.

s/ Anne C. Conway
ANNE C. CONWAY
United States District Judge

APPENDIX D — ORDER OF THE UNITED STATES DISTRICT COURT, MIDDLE DISTRICT OF FLORIDA, ORLANDO DIVISION DATED JULY 31, 2008

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

Case No. 6:06-cv-1943-Orl-22KRS

UNITED STATES OF AMERICA,
ex rel. L. BROWN,

Plaintiff-Relator,

-vs-

WALT DISNEY WORLD CO., and
REEDY CREEK IMPROVEMENT DISTRICT,

Defendants.

ORDER

Upon the Court's review of this case, it is ORDERED as follows:

1. The Relator's Motion to Vacate, Alter or Amend Judgment (Doc. No. 50), filed on July 9, 2008, is GRANTED IN PART AND DENIED IN PART. The Motion is GRANTED insofar as it seeks conversion of

the prior with-prejudice dismissal of this case to a dismissal without prejudice. When dismissal is grounded on lack of subject matter jurisdiction, the dismissal should be without prejudice. *Stalley ex rel U.S. v. Orlando Reg'l Healthcare Sys., Inc.*, 524 F.3d 1229, 1232 (11th Cir. 2008). In all other respects, the Motion is DENIED. The Relator's remaining arguments do not afford any basis for vacating, altering or amending the prior order of dismissal in any other respects.

2. The June 24, 2008 Order (Doc. No. 49) is hereby converted to a dismissal without prejudice. In all other respects, the Order stands as originally-entered.

DONE and **ORDERED** in Chambers, in Orlando, Florida on July 31, 2008.

s/ Anne C. Conway
ANNE C. CONWAY
United States District Judge

APPENDIX E — ORDER OF THE UNITED STATES DISTRICT COURT, MIDDLE DISTRICT OF FLORIDA, ORLANDO DIVISION DATED JUNE 24, 2008

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

Case No. 6:06-cv-1943-Orl-22KRS

UNITED STATES OF AMERICA,
ex rel. L. BROWN,

Plaintiff-Relator,

-vs-

WALT DISNEY WORLD CO., and
REEDY CREEK IMPROVEMENT DISTRICT,

Defendants.

ORDER

Appendix E

I. INTRODUCTION

This is a *qui tam* action brought pursuant to the False Claims Act ("FCA"), 31 U.S.C. § 3729 *et seq.*[1] The United States has declined to intervene. The Defendants, Reedy Creek Improvement District ("Reedy Creek" or "District") and Walt Disney World Company ("WDW") seek dismissal on a number of grounds. Upon carefully considering the parties' submissions and following a hearing held on June 5, 2008, the Court determines that it lacks subject matter jurisdiction over this action. Accordingly, the case will be dismissed.[2]

II. BACKGROUND

Reedy Creek Improvement District is a governmental entity that the Florida legislature created in 1967. The Walt Disney World Resort is situated within the boundaries of the District.

In 1988, Reedy Creek entered into a contract with the U.S. Postal Service to operate a post office in Lake

---

1. Apparently, it is uncontested that Relator "L. Brown" is the daughter of Relator's principal attorney in the case, Raphael Musicus. The Defendants assert that Mr. Musicus fell at Disney and injured himself, and they argue that his resulting personal injury claim is the real motivation underlying this FCA suit. The Defendants also point out that Relator herself has no apparent connection to Disney and is thus not the typical "insider" relator usually encountered in FCA cases.

2. In light of its ruling regarding subject matter jurisdiction, the Court need not reach the Defendants' other dismissal arguments.

Buena Vista, Florida. Lake Buena Vista is a municipality located within the District. Reedy Creek receives payments from the Postal Service pursuant to the contract. WDW was not a signatory to the agreement.

Relator's Amended Complaint consists of two counts. In her first claim, Relator contends that Reedy Creek made two misrepresentations in connection with the 1988 contract: (1) that segregated facilities were not maintained for WDW's employees and (2) that Reedy Creek did not have a parent company. In her second claim, Relator maintains that the Reedy Creek official who signed the 1988 contract misrepresented that Reedy Creek's Board of Supervisors was "duly authorized" to approve the contract. Relator contends the Board of Supervisors was not duly elected and therefore had no authority to enter into the contract, with the result that the contract is void.

Regarding the first claim, the 1988 contract contained a "Certification of Nonsegregated Facilities," which stated:

> By the submission of this offer, the offeror [Reedy Creek] certifies that he does not maintain or provide for his employees any segregated facilities at any of his establishments, and that he does not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. He certifies further that he will not maintain or provide for his

> employees any segregated facilities at any of his establishments, and that he will not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. The offeror or subcontractor agrees that a breach of this certification is a violation of the Equal Opportunity Clause in this contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin, because of habit, local custom, or otherwise.

(Def. Ex. 6) (alteration added.)[3]

Relator contends Reedy Creek knowingly made a false statement when it certified that it did not segregate housing facilities. However, Relator does not contend that Reedy Creek segregated housing for its own employees; rather, she contends the false certification pertained to housing WDW furnished for its employees.

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3. Citations to "Def. Ex. __" refer to the exhibits attached to the Declaration of Brent R. Bickley. (Doc. No. 39.)

Central to this position is Relator's contention that WDW was Reedy Creek's "subcontractor" as that term is used in the nonsegregation certification. Based on that assertion, Relator maintains that the nonsegregation certification applied to employees of both Reedy Creek and WDW. This aspect of Relator's FCA claim also rests on the proposition that the Defendants accomplished the alleged housing segregation by having Reedy Creek de-annex residential living facilities following their construction, something that allegedly reduced the number of minorities within the district.

The contract between Reedy Creek and the Postal Service also contained a certification regarding parent companies. In that regard, the document asked, "Is the offeror owned or controlled by a parent company as described below?" (Def. Ex. 6.) The form explained,

> For the purpose of this offer, a "parent company" is defined as one which either owns or controls the activities and basic business policies of the offeror. To "own another company" means the parent company must own at least a majority (more than 50 percent) of the voting rights in that company. To "control another company," such ownership is not required; if another company is able to formulate, determine, or veto basic business policy decisions of the offeror, such other company is considered the parent company of the offeror. This control may be exercised

> through the use of dominate [sic] minority voting rights, use of proxy voting, contractual arrangements, or otherwise.

(*Id.*) Reedy Creek answered this question, "no." (*Id.*) Relator contends this was a false statement because WDW is in fact the "parent" of Reedy Creek.

Regarding Relator's second claim – alleging that Reedy Creek misrepresented that its Board of Supervisors had authority to enter into the contract – Relator contends that the manner in which the Board of Supervisors held office violated the Reedy Creek Improvement District Enabling Act and the Florida Election Code. The Enabling Act essentially provides that Reedy Creek is governed by a Board of Supervisors, consisting of five owners of land within the District. (Def. Ex. 2, § 4(1).) In electing the Supervisors, each landowner within the District is entitled to one vote for every acre of land and for every major fraction of an acre owned by that landowner within the District.[4] (*Id.*, § 4(5).)

According to Relator, WDW's grants of five acres to each Supervisor to qualify them to hold office are void because (1) the grants violate the Florida Election Code

4. Relator contends the definitions section of the Enabling Act defines landowner as the owner of a "freehold estate." That page of the Act is not included in the excerpts filed with the Court. However, whether the Act contains a freehold estate requirement does not affect subject matter jurisdiction.

in the sense that they constitute a practice different from residents otherwise qualified, who have no opportunity to acquire land in Reedy Creek, and (2) having been given for little or no consideration, they constitute unlawful gratuities. Additionally, Relator contends the Enabling Act's "freehold estate" requirement for a Supervisor to hold office is not met because a WDW affiliate holds an option to re-purchase the land from the Supervisor at any time. Relator also maintains that the Enabling Act's "one acre – one vote" scheme violates the principle of "one person – one vote."

III. THIS COURT LACKS SUBJECT MATTER JURISDICTION UNDER THE FCA'S PUBLIC DISCLOSURE BAR

The FCA's public disclosure jurisdictional bar provides as follows:

> (A) No court shall have jurisdiction over an action under this section based upon the public disclosure of allegations or transactions in a criminal, civil, or administrative hearing, in a congressional, administrative, or Government Accounting Office report, hearing, audit, or investigation, or from the news media, unless the action is brought by the Attorney General or the person bringing the action is an original source of the information.

> (B) For purposes of this paragraph, "original source" means an individual who has direct and independent knowledge of the information on which the allegations are based and has voluntarily provided the information to the Government before filing an action under this section which is based on the information.

31 U.S.C. § 3730(e)(4)(A) & (B).

The Supreme Court has made clear what the statute makes plain: the public disclosure bar is a matter of subject matter jurisdiction. *Rockwell Intern. Corp. v. United States*, 127 S.Ct. 1397, 1405-06 (2007). Further, because the Defendants' jurisdictional challenge is a factual attack supported by evidentiary materials, Relator has the burden of proving that subject matter jurisdiction exists.[5] *Paterson v. Weinberger*, 644 F.2d 521, 523 (5th Cir. 1981).

The Eleventh Circuit "uses a three-part inquiry to determine jurisdiction over an FCA claim based on publicly disclosed information: (1) have the allegations made by the plaintiff been publicly disclosed; (2) if so, is the disclosed information the basis of the plaintiff's suit; (3) if yes, is the plaintiff an 'original source' of that information." *Battle v. Bd. of Regents for Ga.*, 468 F.3d

5. Even if the Defendants bore the burden of establishing the absence of jurisdiction, the outcome would be the same, since the Defendants have met that burden.

755, 762 (11th Cir. 2006) (citation and some internal quotation marks omitted). Moreover, "[t]he FCA is most naturally read to preclude suits based in *any part* on publicly disclosed information." *Id.* (same) (emphasis in original). "Therefore, a plaintiff basing an FCA *qui tam* claim *in any part* on such publicly disclosed information must demonstrate that the plaintiff is an original source of that information." *Id.* (emphasis added).

This Court concludes that the public disclosure bar applies here.

The only circumstance that Relator has identified to support her contention that Reedy Creek's 1988 certification regarding non-segregated housing was false is that the Defendants allegedly practiced discrimination by de-annexing property on which residential housing was constructed. Moreover, the only specific such incident Relator identifies is a de-annexation that occurred in 1990.[6] This transaction is central to Relator's FCA claim. Regarding this incident, the Amended Complaint alleges, in a section entitled "DISNEY SEGREGATES HOUSING FOR EMPLOYEES":

> 62. The population history of [The City of Lake Buena Vista], per the U.S. Census count, is as follows:

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6. For present analytical purposes, the Court will disregard any concerns about Relator's reliance on a transaction that occurred in 1990 to establish the falsity of a statement made in 1988.

Appendix E

(a) In 1970 . . . 12; in 1980 . . . 98; in 1990 . . . 1,776; in 2000 . . . 16[.]

(b) The 1,776 persons of Buena in 1990 resided primarily in Vista Way Apartments, under the control of [WDW]. This complex consists of over 400 housing units, which opened for occupancy in 1988. This housing complex is restricted to employees, including interns, primarily of [WDW]. None of the residents in Vista Way Apartments were ever given an opportunity to vote in Buena or [Reedy Creek].

(c) The decreases in Buena's population and elimination of minorities were accomplished by de-annexations. In 1990, *Disney* began de-annexation of Vista Way Apartments, 13501 Meadow Creek Drive, Orlando, FL 32821. As a result, all remaining black persons, Hispanics, and others of a minority race, were removed from Buena. The U.S. 2000 Census of Buena discloses that all permanent residents are white. No black persons, Hispanics, or others of a minority race, remain to date in Buena.

(Doc. No. 25, ¶ 62) (emphasis in original) (alterations added.)

Appendix E

The allegation that the Defendants had a routine practice of de-annexing residential housing parcels has been the subject of newspaper articles for many years. (Def. Exs. 15, 16 & 17.) Further, the 1990 de-annexation in particular has been disclosed in public sources that qualify as "news media." (Def. Exs. 12 (Wikipedia website);[7] 25-31 (legal notices published in newspaper)).[8] Similarly, the suggestion that WDW controls Reedy Creek has long been bandied-about in the press, (Def. Exs. 17, 39, 40, 76, 81), and has even been the subject of a court opinion issued by another judge in this judicial district, (Def. Ex. 36.) These materials, too, qualify as public disclosures of the kind listed in § 3730(e)(4)(A). Finally, regarding the "lack of authority" issue, the manner in which Reedy Creek's Supervisors are elected, the "one acre - one vote" mechanism, the assertedly "token" nature of the land grants to the Supervisors, Disney's exclusive re-purchase option, and Disney's alleged *de facto* control over the election process have also been publicly disclosed in the news media. (Def. Exs. 17, 64, 65, 72 & 73.) Almost all of these same matters have also been disclosed in a state agency report (Def. Ex. 46.)

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7. The internet can qualify as "news media" within the meaning of § 3730(e)(4)(A). *United States ex rel. Unite Here v. Cintas Corp.*, No. C 06-2413 PJH, 2007 WL 4557788 at *12 (N.D. Cal. Dec. 21, 2007).

8. Additionally, the population figures upon which Relator's allegations of segregated housing are based are publicly disclosed in census reports.

In the face of this evidence, Relator counters with an unusual argument; she maintains that some of her allegations are based on information contained in a book, and she argues that a book does not qualify as a public disclosure because it is not among the sources listed in § 3730(e)(4)(A). The book in question is *Married to the Mouse*, by Richard Foglesong; it was published in 2001 by the Yale University Press. In her opposition legal memo, Relator states that this book "discloses Disney was previously warned that Disney's acts depriving residents of their right to vote are unconstitutional." (Doc. No. 44 at 2) (emphasis omitted.) Later in that same brief, Relator quotes the excerpt from the book upon which she relies. To paraphrase, the quoted portion discusses a 1966 memo from attorney Paul Helliwell to Walt Disney and other top company officials, supposedly outlining the voting and control problems associated with allowing permanent residents on Disney property, as well as Walt Disney's reaction (to the effect that there should be no permanent residents within the Disney community). (*Id.* at 16-18.)

At oral argument, Relator's counsel indicated that the present lawsuit is based in significant part on this book. In fact, Relator places so much importance on this source that she characterizes it as "The Smoking Gun" (Doc. No. 44 at 2.) Concerning Relator's position that a book cannot constitute a public disclosure because it is not among the types of sources listed in § 3730(e)(4)(A), the Defendants reply that this particular book does

qualify under the "news media" category.[9] However, the Court need not decide the question of whether a book of this type can qualify as a "news media" source. For even if Relator does base some aspects of her lawsuit on this book, as previously discussed, other allegations and transactions upon which her lawsuit is founded have been publicly disclosed within the meaning of § 3730(e)(4)(A). To reiterate, Eleventh Circuit decisional authority is quite clear that the jurisdictional bar applies if *any part* of an FCA claim is based on publicly disclosed information. *Battle*, 468 F.3d at 762. That is precisely the circumstance here.[10]

Based on the foregoing, it is quite clear that a significant part of the allegations and transactions upon which Relator's FCA claims are based have been publicly disclosed. Further, by no stretch of the imagination can Relator be considered an "original source." Since this Court lacks subject matter jurisdiction if *any part* of an FCA claim is based on publicly-disclosed allegations and transactions, dismissal of this suit is mandated.

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9. Specifically, the Defendants maintain that Foglesong's book qualifies under the "news media" category of public materials on the asserted basis that "(1) it is an academic work . . . ; (2) it expressly relies on articles and other 'news media' sources; and (3) it received publicity and was itself extensively discussed in the 'news media.' (Doc. No. 47 at 3-4.)

10. Additionally, an abbreviated version of the matters discussed in the book excerpt – the memo from the attorney and Walt Disney's reaction – was also reported in a Washington Post article written by the same author. (Def. Ex. 14.) Unquestionably, that article qualifies as a public disclosure via the news media.

Appendix E

IV. CONCLUSION

Based on the foregoing, it is ORDERED as follows:

1. The Defendants' Joint Motion to Dismiss (Doc. No. 38), filed on April 21, 2008, is GRANTED.

2. This case is DISMISSED, WITH PREJUDICE.

3. The Clerk shall close the case.

DONE and **ORDERED** in Chambers, in Orlando, Florida on June 24, 2008.

s/ Anne C. Conway
ANNE C. CONWAY
United States District Judge

APPENDIX F — LETTER FROM LEAD ATTORNEY RAPHAEL J. MUSICUS TO ELORA JACKSON THE CLERK OF THE UNITED STATES COURT OF APPEALS DATED JUNE 13, 2009

Raphael J. Musicus
Lead Attorney for Appellant-Relator, L. Brown

June 13, 2009

Clerk, United States Court of Appeals
For the Eleventh Circuit - Attn: Ms. Elora Jackson
56 Forsyth St., N.W., Atlanta, GA 30303-2289

Re: Docket #: 08-16350-DD, USA v. The Walt Disney World Co. Docket Date: 11/10/2008, Reply Brief File Date: 5/28/2009 FRAP 28 (j) - Citation of Supplementary Authority

Dear Ms. Jackson:

Effective 12/12/2008, subsequent to the initial date of this appeal, the Federal Acquisition Regulation (FAR) was amended as herein affecting all government contracts, including the United States Post Office contract and the Army lease which are the subjects of this appeal. Appellees' Brief at 20 states, "the Postal Service continues to make monthly payments . . . and the United States, after reviewing Brown's allegations, made a considered decision not to intervene in support of this action."

All U.S. contractors, including Appellees, are subject to **mandatory timely disclosure** to the government of

Appendix F

"credible evidence" of all violations below [48 CFR, FAR 3.1003(a)(2-3); 9.406-2(b); 9.407-2(a)(8)]. Penalties include debarment or suspension. Mere filing of the qui tam action does not suffice. The required report by Appellees is material to the considered decision by United States whether to currently intervene.

1. A "violation of Federal criminal law involving fraud, conflict of interest, bribery or gratuity violations," found in Title 18 U.S.C.

2. A violation of the civil False Claims Act (31 U.S.C. 3729-3733).

3. Significant overpayments by the federal government.

Yours truly,

Raphael J. Musicus
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